

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MYERS CONTROLLED POWER, LLC,)	CASE NO. 5:08-CV-02516
)	
Plaintiff,)	JUDGE DOWD
v.)	
)	
DAILY EXPRESS, INC. et al.,)	MAGISTRATE JUDGE PEARSON
)	
)	
Defendants.)	MEMORANDUM AND ORDER

On January 16, 2009, Plaintiff filed a motion seeking leave to amend its Complaint to include “an additional cause of action based upon [49 U.S.C. § 14704\(a\)\(2\)](#).” [ECF No. 25](#).

[Federal Rule of Civil Procedure 15\(a\)\(2\)](#) provides that a court “should freely give leave [to amend a complaint] when justice so requires.” The right to amend is not absolute or automatic. [Tucker v. Middleburg -Legacy Place](#), 539 F.3d 545, 551 (6th Cir.2008); [Sinay v. Lamson & Sessions Co.](#), 948 F.2d 1037, 1041 (6th Cir.1991). In determining whether to grant a motion to amend under [Rule 15\(a\)](#), this Court has held that a number of factors should be considered, including “[u]ndue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice

to the opposing party, and futility of amendment” Wade v. Knoxville Utilities Bd., 259 F.3d 452, 458 (6th Cir.2001); *see also* Coe v. Bell, 161 F.3d 320, 341 (6th Cir.1998); Head v. Jellico Hous. Auth., 870 F.2d 1117, 1123 (6th Cir.1989).

Plaintiff’s motion to amend its Complaint is, hereby, granted. Defendants are granted leave until February 2, 2009, to supplement their pending motion to dismiss in response to Plaintiff’s amended complaint. *See* ECF No. 2. Plaintiff’s are granted leave to supplement their opposition to Defendants’ motion to dismiss by February 9, 2009. *See* ECF No. 7.

IT IS SO ORDERED.

Date: January 20, 2009

/s/ Benita Y. Pearson
United States Magistrate Judge